No. 91-5397

In The

Supreme Court of the United States

October Term, 1992

EMERY L. NEGONSOTT,

Petitioner,

v.

HAROLD SAMUELS, WARDEN, et al.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF OUT OF TIME AND BRIEF AMICI CURIAE OF THE IOWA TRIBE OF KANSAS AND NEBRASKA; KICKAPOO NATION IN KANSAS; AND THE PRAIRIE BAND POTAWATOMI INDIAN TRIBE OF KANSAS IN SUPPORT OF PETITIONER

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October, 1992

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MOTION FOR LEAVE TO FILE BRIEF OUT OF TIME

Pursuant to Rule 37, *amici curiae* consisting of three federally-recognized Indian tribes, respectfully move this Court for leave to file the attached brief *amici curiae* in support of Petitioner Emery Negonsott out of time. The reasons in support of this motion are as follows.

Petitioner's brief in this case was due and filed on August 31, 1992. Under Rule 37.3, the brief of *amici* would have been due on that date. However, due to the press of other responsibilities, *amici* were unable to obtain counsel to present their views in this important case until after Petitioner's brief was due.

Petitioner and the Respondent State of Kansas have consented to the filing of the brief of *amici* and to the filing of the brief out of time.[1] Moreover, Respondent has requested an extension of time to file its brief until October 26, 1992. As this motion and brief are being filed on October 19, 1992, the proceedings in this case will not be delayed by the late filing of *amici's* brief.

Dated this 19th day of October, 1992

Respectfully submitted,

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[1] The consents are submitted for filing herewith.

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INTEREST OF THE *AMICI CURIAE*

Amici curiae are three federally-recognized Indian tribes whose reservations are wholly or partly within the State of Kansas. The Iowa Tribe of Kansas and Nebraska has 275 members and 923 acres of tribal trust land in Kansas.[1] Another 206 acres of land in Kansas is held in

[1] The Iowa Tribe also has 491 acres of trust land in Nebraska.

trust for individual members of the Iowa Tribe. The Kickapoo Nation in Kansas has 727 members and 6,683 acres of tribal trust land. The Prairie Band Potawatomi Indian Tribe of Kansas has 610 members and 22,698 acres of tribal trust land.

The issue in this case – the existence of state jurisdiction and the scope of federal jurisdiction over major crimes committed by tribal members on their reservations – is one in which *amici* have a substantial interest. Under the Kansas Act of 1940, 18 U.S.C. § 3243, the State of Kansas is attempting to prosecute in state court Indians who commit major crimes on their reservations.

Amici wholly support effective law enforcement on their reservations. However, under the Major Crimes Act of 1885, 18 U.S.C. § 1153, tribal members already are subject to criminal prosecution in the federal courts for major crimes enumerated in that Act which are committed in Indian country. To the extent the Kansas Act authorizes the state to exercise some criminal jurisdiction over Indians, *amici* strenuously object to that jurisdiction extending beyond that which has been granted by Congress. This is especially so when such an extension would subject tribal members to additional prosecutorial schemes.

The issue here also poses a significant threat to the treaty rights of *amici*. In their treaties with the United States, *amici* ceded millions of acres of land in exchange for their reservations and the right to be self-governing

on those reservations.[2] A corollary guarantee of the right to tribal self-government is the right of Indians to be free from state jurisdiction on their reservations. *Amici* oppose the diminishment of their treaty rights and note that at least one *amici* tribe went on record as objecting to the passage of the Kansas Act at issue here.

Petitioner has set forth reasons the decision of the Court of Appeals is in direct conflict with the language and intent of the Major Crimes Act. In this brief, *amici* present additional reasons for reversing the Court of Appeals' decision.

SUMMARY OF ARGUMENT

Under the Kansas Act of 1940, the State of Kansas is attempting to prosecute an Indian for the commission of a major crime in Indian country. However, the grant of jurisdiction over reservation Indians to the state in that Act is qualified by an express mandate against depriving the federal courts of their jurisdiction over Indians. Under the Major Crimes Act of 1885, the federal courts have exclusive jurisdiction over major crimes committed by Indians in Indian country.

The Court of Appeals below erroneously concluded that, notwithstanding the Major Crimes Act, the Kansas Act authorizes concurrent jurisdiction in the state courts over major crimes by Indians. That interpretation

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[2] *E.g.*, Treaty with the Iowa of May 17, 1854, 10 Stat. 1069; Treaty with the Kickapoo of May 18, 1854, 10 Stat. 1078; Treaty with the Potawatomi Nation of June 5 and 17, 1846, 9 Stat. 853.

"deprives" federal jurisdiction of its exclusivity in violation of the ordinary, plain meaning of the Kansas Act mandate against deprivation. In the case of sovereign jurisdiction, exclusivity is paramount – to reduce it even to concurrent is commonly understood to be a deprivation. Thus, by its terms, the Kansas Act preserves exclusive federal jurisdiction and precludes concurrent state jurisdiction over major crimes by Indians in Indian country.

Alternatively, assuming *arguendo* this Court should find that the Kansas Act is ambiguous regarding jurisdiction over major crimes, the Court should nevertheless find that state jurisdiction over major crimes by Kansas Indians in Indian country is prohibited. Special Indian law canons of construction – under which, ambiguous Indian statutes or provisions must be construed liberally in favor and to the benefit of the Indians – as well as other historical and jurisprudential doctrines compel this result.

Congress has traditionally and fastidiously exempted Indians in Indian country from state jurisdiction. Criminal jurisdiction is the most important and pervasive area in which Congress has done so. It also is significant that, regarding major crimes of the type at issue here, this Court has for over 100 years construed jurisdiction to be exclusive in the federal courts unless Congress has provided otherwise with manifestly clear intent. The reason underlying Congress' and this Court's traditional treatment of major crime jurisdiction as exclusively federal is the need to protect Indians from hostility toward and bias against them by non-Indians.

This need for protection against undue hostility, bias, and state interference was and continues to be a concern of the Kansas tribes. The Court of Appeals below erred in finding that the tribes requested the extension of state jurisdiction over them by the Kansas Act. The legislative history clearly shows that at least one tribe repeatedly objected to its passage. The other tribes did not understand the Act to affect exclusive federal jurisdiction over major crimes.

ARGUMENT

I. INTRODUCTION

The Kansas Act of 1940, 62 Stat. 827, provides that:

> Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.
>
> This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

18 U.S.C. § 3243.

The phrase "offenses defined by the laws of the United States committed by or against Indians on Indian reservations" refers to, *inter alia*, the Major Crimes Act of 1885, 23 Stat. 385. That Act provides that:

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

18 U.S.C. § 1153.[3]

It is not disputed in this case that, as between the federal and state governments, jurisdiction over major crimes committed by Indians in Indian country is exclusive in the federal courts under the Major Crimes Act.[4]

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[3] Exclusive subject matter jurisdiction over, *inter alia*, prosecutions under the Major Crimes Act is given to the federal courts by 18 U.S.C. § 3231.

[4] Notwithstanding the Major Crimes Act, tribes retain inherent authority to prosecute major crimes under tribal law committed by their members on Indian lands. *See* United States v. Wheeler, 435 U.S. 313, 325 (1978) ("far from depriving Indian tribes of their sovereign power to punish offenses against tribal law by members of tribe, Congress has repeatedly recognized

The issue is whether the Kansas Act altered that express provision for the state of Kansas, and made jurisdiction over major crimes concurrent between the federal and state governments, or whether it left the federal exclusivity of the Major Crimes Act intact.

The Court of Appeals below held that jurisdiction is concurrent. *Negonsott v. Samuels*, 933 F.2d 818 (10th Cir. 1991). The opposite conclusion was reached in *Youngbear v. Brewer*, 549 F.2d 74 (8th Cir. 1977), which held that, notwithstanding the Iowa Act of 1948, 62 Stat. 1161, which is virtually identical to the Kansas Act, jurisdiction over major crimes remains exclusively federal. For the following reasons, the *Youngbear* decision is correct and the Court of Appeals' decision below here should be reversed.

II. THE STATE CANNOT EXERCISE CRIMINAL JURISDICTION OVER MAJOR CRIMES COMMITTED BY INDIANS ON THEIR RESERVATIONS BECAUSE, BY ITS TERMS, THE KANSAS ACT LEAVES THAT JURISDICTION EXCLUSIVELY WITH THE FEDERAL COURTS UNDER THE MAJOR CRIMES ACT

"Interpretation of a statute must begin with the statute's language." *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 300 (1989). "[T]he language of a statute controls when sufficiently clear in its context." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976). "[U]nless otherwise

---

that power and declined to disturb it"). In this brief, the term "exclusive" is used to mean exclusive as between the federal and state governments.

defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979).

Under these fundamental rules of statutory construction, it is sufficiently clear that the Kansas Act left exclusive jurisdiction over major crimes to the federal courts. This conclusion is reached by giving plain meaning to the words in the qualifying second sentence of the Kansas Act "shall not deprive the courts of the United States of jurisdiction. . . . " "Deprive" ordinarily means to withhold, remove, or take away. Under the Major Crimes Act, federal jurisdiction over major crimes by Indians is exclusive. If that jurisdiction is made concurrent with state courts, then federal jurisdiction is no longer exclusive. In other words, the federal courts have been deprived of their exclusivity.

The importance of exclusivity where sovereign jurisdiction is concerned often has been recognized. For example, in *Williams v. Lee*, 358 U.S. 217 (1959), this Court held that jurisdiction over civil causes of action arising on the reservation brought by non-Indians against Indians is exclusive in the tribal courts.

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves.

358 U.S. at 223. The Court easily assumed that even *concurrent* state jurisdiction would unduly interfere with tribal sovereign powers. *Accord Fisher v. District Court*, 424 U.S. 382 (1976) (tribal court jurisdiction over adoption

proceedings where all parties are tribal members and reservation residents is exclusive of state court jurisdiction); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (holding that federal jurisdiction for issues other than habeas corpus arising under the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03, would interfere with tribal autonomy and self-government).

Similarly, in *Callaway v. Benton*, 336 U.S. 132, 154-55 (1949) (Douglas, J., dissenting), it was noted that "[i]f state courts can intrude with injunctions on such state law questions [in certain interstate commerce matters], the exclusive command of the federal agencies over the reorganization process is lost. . . . " *Accord* Note, *Mixed Arbitrable and Nonarbitrable Claims in Securities Litigation: Dean Witter Reynolds, Inc. v. Byrd*, 34 Cath. U.L. Rev. 525, 528 (1985) ("if issues relevant to the federal claim are decided in arbitration or state court, the federal court may be deprived of its exclusive jurisdiction"). In other contexts, it is commonly understood that a loss of exclusivity amounts to a deprivation. *See, e.g., Carroll v. Lanza*, 349 U.S. 408, 412 (1955) (where a remedy, made exclusive by state law, has been qualified or contravened by the law of another state, it has been "deprived" of its exclusivity).

Thus, to say, as the Solicitor General does, *Amicus Curiae* Br. of U.S. on Pet. for a Writ of Cert. at 7, – with no citation to authority – that concurrent state court jurisdiction under the Kansas Act over major crimes does not deprive the federal courts of jurisdiction, is at odds with the plain meaning of the language of the Kansas Act. To the extent there are instances where a loss of exclusivity does not amount to a deprivation, in the case of sovereign jurisdiction, exclusivity is paramount. To lose it, albeit

while retaining concurrent authority, is a deprivation. Hence, the plain language of the Kansas Act preserves exclusive federal jurisdiction and operates to preclude a finding of concurrent state jurisdiction over major crimes which are exclusively federal.

III. ALTERNATIVELY, TO THE EXTENT THE KANSAS ACT IS UNCLEAR, THE STATE IS BARRED FROM EXERCISING JURISDICTION OVER INDIANS WHO COMMIT MAJOR CRIMES ON THEIR RESERVATIONS UNDER LONGSTANDING PRINCIPLES OF FEDERAL LAW

Amici maintain that the language of the Kansas Act is clear on its face regarding the intent to leave exclusive jurisdiction over major crimes with the federal courts. However, assuming *arguendo* that this Court should find that the language is ambiguous,[5] this Court should nevertheless find that jurisdiction over major crimes by Kansas Indians in Indian country is exclusively federal.

As this Court stated unequivocally just last term in *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, ___ U.S. ___, 112 S.Ct. 683 (1992):

> When we are faced with . . . two possible constructions [of an Indian law statute], our choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: 'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'

[5] Indeed, the Court of Appeals below, 933 F.2d at 820-21, and the Court of Appeals in *Youngbear*, 549 F.2d at 76, both concluded that the Kansas Act is ambiguous regarding jurisdiction over major crimes.

112 S.Ct. at 693. These Indian law canons of construction and other longstanding jurisprudential doctrines compel the preclusion of state jurisdiction over major crimes committed by Indians in Indian country in Kansas.

A. As Between The Federal And State Governments, Congress Has Historically Committed Criminal Jurisdiction Over Indians To The Federal Government

In *County of Yakima*, this Court noted that Congress' exemption of Indians in Indian country from state jurisdiction is grounded in its constitutional authority under the Commerce Clause and Treaty Clause. 112 S.Ct. at 687. Under this "deeply rooted" policy of leaving Indians "free from state jurisdiction and control," *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 168 (1973), criminal law is the area in which federal jurisdiction has been most pervasive. *See generally* F. Cohen, *Handbook on Federal Indian Law* 286-308 (1982 ed.); *see also* R. Clinton, N. Newton, & M. Price, *American Indian Law* 275 (3rd ed. 1991) ("One of the earliest and most far-reaching federal regulatory intrusions into Indian county has been in the area of federal criminal jurisdiction").

For example, since 1817, the General Crimes Act, 18 U.S.C. § 1152, has made the general criminal laws of federal maritime and enclave jurisdiction applicable to Indian country. Since 1885, the Major Crimes Act has provided for exclusive federal prosecution of Indians

within Indian country for the commission of crimes enumerated in that Act. These Acts descend from early treaties between the United States and the tribes, many of which provided for federal criminal jurisdiction in Indian country. F. Cohen, *Handbook of Federal Indian Law* at 287-89.

Thus, any ambiguities in the Kansas Act regarding jurisdiction should be resolved in favor of the traditional treatment by Congress of such matters. In short, the intent of Congress to alter the historically exclusive federal jurisdictional scheme in Indian country with a narrow exception such as the Kansas Act must be manifestly clear. *See, e.g.*, 18 U.S.C. § 1162 and 25 U.S.C. §§ 1321-26 (commonly known as "Public Law 280," wherein, in 1953, Congress extended or authorized the extension of certain state criminal and civil jurisdiction into certain Indian country, and expressly excluded application of the Major Crimes Act to areas covered by Public Law 280). If the language and intent are equivocal, then this Court should presume that Congress intended to continue its long-standing practice of leaving jurisdiction over Indians in Indian country exclusively federal. *See Bryan v. Itasca County*, 426 U.S. 373, 389 (1976) ("Congress knew well how to express its intent directly when that intent was to subject reservation Indians to the full sweep of state laws. . . . "); *see also Tafflin v. Levitt*, 493 U.S. 455, 472 (1990) (Scalia, J., concurring) ("implied preclusion [of state court jurisdiction] can be established by the fact that a statute expressly mentions only federal courts, plus the fact that state-court jurisdiction would plainly disrupt the statutory scheme").

B. A Long Line of Cases Of This Court Have Upheld Exclusive Federal Jurisdiction Under The Major Crimes Act

As the Court of Appeals in *Youngbear* noted, 549 F.2d at 75, this Court has long interpreted the Major Crimes Act as granting federal courts exclusive jurisdiction over the enumerated major crimes therein. *E.g., United States v. Kagama*, 118 U.S. 375 (1886); *Williams v. Lee*, 358 U.S. at 220 n.5; *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Keeble v. United States*, 412 U.S. 205 (1973); *United States v. John*, 437 U.S. 634 (1978).

If the language and intent of the Kansas Act are unclear, there is no reason for this Court to depart from its prior constructions of the Major Crimes Act. *See County of Yakima*, 112 S.Ct. at 688, ("our cases reveal a consistent practice of declining to find that Congress has authorized [state jurisdiction over reservation Indians] unless it has 'made its intention to do so unmistakably clear' "). To construe the Kansas Act as giving the state concurrent jurisdiction over major crimes notwithstanding the express language of the Major Crimes Act would, as Petitioner argues, Pet. Op. Br. at 8-11 & 14, "impliedly repeal" the exclusivity of the Major Crimes Act.

It is fundamental that implied repeals of an earlier statute by a later one are not favored, especially where the statutes can be read without conflict to give effect to both statutes. *United States v. Fausto*, 484 U.S. 439, 452-53 (1988). Here, the only way to give effect to all phrases of both the Kansas Act and the Major Crimes Act is to find, as the Court of Appeals in *Youngbear* did with respect to

the Iowa Act, 594 F.2d at 76, that the Kansas Act merely authorizes state jurisdiction over those crimes that are not within exclusive federal jurisdiction such as major crimes. As this Court has continually held, jurisdiction over major crimes remains exclusive with the federal courts.

C. Federal Indian Policy Weighs In Favor of Exclusive Federal Jurisdiction Over Major Crimes By Indians

In *United States v. Kagama*, which tested the constitutionality of the Major Crimes Act, this Court justified federal jurisdiction over Indians who commit crimes under the Act in part on the basis of the potential prejudice of local juries against Indians.

> Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies.

118 U.S. at 384.

Around the time of the passage of the Kansas Act, in *Rice v. Olson*, 324 U.S. 786 (1945), this Court reemphasized that:

> The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history. In light of this historical background Congress in 1885 passed a comprehensive Act [the Major Crimes Act] in order to fulfill treaty stipulations with various Indian Tribes. . . . The last section of that Act subjects

> Indians who commit certain crimes . . . [to the exclusive jurisdiction of the federal courts.]

324 U.S. at 789 (citations omitted).

Given its trust responsibility to Indian tribes and its commitment to federal jurisdiction over Indian people, particularly in the area of criminal jurisdiction, Congress was undoubtedly aware of the ever-present animosity towards Indians at the time it enacted the Kansas Act. The Kansas Act, although in some ways a departure from traditional Indian statutes, nevertheless reflects a balance of the basic interests which Congress historically has considered in Indian law: to the extent the Kansas Indians needed effective law enforcement protection, they also needed to be protected from undue hostility and interference by the state. The compromise was to give the state of Kansas full jurisdiction over minor crimes, but to keep jurisdiction over major crimes exclusive in the federal courts.

The potential for hostility towards and bias against reservation Indians accused of major crimes remains a concern today in Kansas, where non-Indians typically outnumber Indians. It could, for example, affect the state court triers of fact. It would be anomalous for this Court to gut a fundamental purpose underlying much of federal Indian policy – the protection of Indians – to which Congress so often has responded clearly in laws such as the Major Crimes Act and which this Court itself noted around the time of the passage of the Kansas Act, by allowing the state to exercise jurisdiction over major crimes committed by Indians on their reservations.

D. The Court Of Appeals Erred In Finding That The Kansas Tribes Approved Of The Kansas Act; To The Contrary, The Legislative History Shows That The Indians Objected To The Extension Of State Jurisdiction

Tribal sovereign interests provide a "backdrop against which the applicable [Indian law] treaties and federal statutes must be read." *McClanahan*, 411 U.S. at 172. In concluding that the Kansas Act intended to give the state concurrent jurisdiction over major crimes, and in determining that such an interpretation did not violate the Indian law canons of construction, the Court of Appeals stated:

> The Kansas tribes themselves, in the interest of establishing law and order on Indian lands, 'expressed a wish that the jurisdiction hitherto exercised by the State courts [over both major and minor crimes] be continued.' House Report at 4-5. We are unwilling to conclude that state court criminal jurisdiction *conferred by Congress in response to tribal requests* invades the special relationship between the tribes and the federal government. If anything, the Kansas Act reflects congressional responsiveness to Tribal needs for unified law enforcement as expressed by the Tribes themselves.

933 F.2d at 823 (brackets, citation, and emphasis in original).

The Court of Appeals was quoting from and referring to the Letter from E.K. Burlew, Acting Secretary of the Interior, to Rep. Will Rogers, Chairman of the House Committee on Indian Affairs, *reprinted in* H.R. Rep. No. 1999, 76th Cong., 3d Sess. 2 (1940). Similarly, in support

of its argument before this Court for concurrent jurisdiction, the Solicitor General states that "the Indians in Kansas did not object to this regime, and in fact sought enactment of [the Kansas Act] to clarify the legality of the State's exercise of jurisdiction. . . . " *Amicus Curiae* Br. of U.S. on Pet. for a Writ of Cert. at 9-10.

However, the legislative history of the Kansas Act shows clearly that at least one tribe repeatedly objected to the passage of the Kansas Act, right up until the time of its enactment. On May 8, 1939, James Wahbnosah, Chairman of the Business Committee of the Prairie Band Potawatomi Indian Tribe of Kansas, telegrammed Rep. Will Rogers, Chairman of the House Committee on Indian Affairs that the "POTAWATOMI INDIAN COUNCIL REQUESTS THAT HOUSE BILL 3048 NOT BE PASSED LETTER FOLLOWS." In the letter, also dated May 8, 1939, Chairman Wahbnosah wrote:

> We the Business Committee of the Prairie Band of Potawatomie Indians located at Mayetta Jackson County Kansas voted by majority of council to oppose the introduction of House Bill #3048. The resolution was presented by the Superintendent of this reservation and was turned down by a majority of the Business Committee. Its presentation was a forgery. We did not want it.

Receipt of the telegram and letter were acknowledged by Chairman Rogers in his letter dated May 10, 1939 to Chairman Wahbnosah, in which he stated, "Feel free to keep me advised on legislation affecting your tribe. Your letters are being filed with the House Committee on Indian Affairs."

On May 16, 1939, Chairman Wahbnosah wrote Chairman Rogers that "[t]he Business Committee of the Prairie Band Potawatomi tribe of Indians represents eleven-hundred of the sixteen-hundred Indians of Kansas, five-hundred of these Indians are being represented by the councils of the Kickapoo, Iowa and Sac & Fox tribes. I beg to urge all you can in your power to stop this H.R. 3048."

On April 25, 1940, Chairman Wahbnosah again wrote Chairman Rogers that "[w]e have noted in A.P. News releases dated Washington, D.C. April 21, 1940, that the House Indian Affairs Committee has approved a Bill #3048 Providing for surrendering of Jurisdiction over offenses committed on Indian Reservations to the State of Kansas." He explained that "the Indians of Kansas" protested the bill.

On May 2, 1940, Chairman Wahbnosah wrote the Hon. E.K. Burlew, Acting Secretary of the Interior, and questioned the statement in Burlew's March 16, 1940 letter, the letter reprinted in H.R. Rep. No. 1999, that "the tribal councils of the four Kansas tribes have recommended the enactment of" H.R. 3048. In Chairman Wahbnosah's words:

> [W]hen and where was this recommendation given to the Superintendent? The Legally elected Potawatomi Business Committee in one of the meetings were against this Bill and vetoed it when it was put up for vote. . . . The Legally elected Business Committee of the Prairie Band of Potawatomi Indians in Kansas have never approved nor authorized the Superintendent here to recommend to Congress any such drastic and unfair law as is proposed in #3408. There is now existing Law on the Statutes under title eighteen criminal code to handle any class of crime committed by Indians and therefore this proposed #3408 is un-warranted.

On May 6, 1940, Chairman Rogers acknowledged receipt and filing of a copy of Chairman Wahbnosah's letter to Burlew.

All of the above-referenced correspondence are public documents on file in the National Archives under Record Group 233, H.R. 76A-D16, H.R. 3048. They show that the Potawatomi Tribe repeatedly went on record as objecting to any state jurisdiction over Indians on its reservation. And, as evidenced by the filing of this brief, the Kickapoo and Iowa Tribes did not understand the Kansas Act to affect exclusive federal jurisdiction under the Major Crimes Act.

CONCLUSION

For the reasons stated above, the decision of the Court of Appeals should be reserved.

Respectfully submitted,

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